

Assembly Bill No. 96

CHAPTER 135

An act to add Section 35029.1 to the Education Code, relating to the Emery Unified School District, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 30, 2001. Filed with
Secretary of State July 31, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 96, Aroner. School districts.

(1) Existing law authorizes the governing board of a school district that determines during a fiscal year that its revenues are less than the amount necessary to meet its current year expenditure obligations to request an emergency apportionment through the Superintendent of Public Instruction subject to requirements and repayment provisions.

This bill would appropriate \$2,300,000 to the Superintendent of Public Instruction for the purpose of providing the Emery Unified School District a loan, allocated as specified, with conditions as specified. The bill would require the Superintendent of Public Instruction to immediately appoint an administrator, who would have specified duties and responsibilities. The bill would require the Controller to conduct audits of the books and accounts of the district until the Superintendent of Public Instruction determines that the district is solvent. The duties imposed by the bill on the district would constitute a state-mandated local program.

The bill would require the Superintendent of Public Instruction to appoint the Fiscal Crisis and Management Assistance Team to act as a fiscal adviser for the district, as specified, and would prescribe related matters.

This bill would declare that due to the unique circumstances relating to the Emery Unified School District's financial emergency, a general statute cannot be made applicable.

(2) Existing law prescribes the minimum requirements for the preliminary services credential with a specialization in administrative services. Under existing law, a local governing board may waive any credential requirement for the chief administrative officer of the school district under its jurisdiction, as specified.

This bill would, notwithstanding those provisions authorizing a local governing board to waive any credential requirements for a chief administrative officer, prohibit a local governing board from hiring an

individual for the position of chief administrative officer of the school district whose credential has been revoked by the Commission on Teacher Credentialing pursuant to specified provisions.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares that because of the fiscal emergency in which the Emery Unified School District finds itself, it is necessary for the Superintendent of Public Instruction to appoint an administrator if the district accepts a loan as described in this act ; accordingly, the Superintendent of Public Instruction shall immediately appoint an administrator for the Emery Unified School District who shall be governed by Article 2.5 (commencing with Section 41325) of Chapter 3 of Part 24 of the Education Code as well as any conditions stipulated in this act. The Superintendent of Public Instruction may contract for the services of one or more persons having legal, accounting, labor negotiation, or other expertise as necessary to assist the administrator. In order to facilitate the appointment process, the State Department of Education is exempt from Part 2 (commencing with Section 10100) of the Public Contract Code and Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code when contracting for the services of an administrator and other persons as described in this subdivision.

(b) The Legislature finds and declares that it is impossible to solve all of the district's fiscal problems immediately. During the two years immediately following Emery Unified School District's initial receipt of proceeds from the emergency loan provided by this act, the Superintendent of Public Instruction, after consultation with the Alameda County Superintendent of Schools, may approve the use of timelines, criteria, and standards for the submission and review of the district's budget, interim reports, and other financial reports required of the district, that vary from the timelines, criteria, and standards required pursuant to Sections 33127, 41020, and 42127 to 42130, inclusive, of



the Education Code as necessary to accomplish the full fiscal recovery of the district.

(c) It is the intent of the Legislature, in enacting this section, to authorize the administrator appointed pursuant to subdivision (a) to enter into a lease with the City of Emeryville pursuant to Article 4 (commencing with Section 17456) of Chapter 4 of part 10.5 of the Education Code, for the use of the school district's facilities during nonschool hours and events for recreational and community programs, so that the school district may utilize the proceeds from the lease to pay off the loan made pursuant to Section 3 of the act adding this section.

SEC. 2. Section 35029.1 is added to the Education Code, to read:

35029.1. Notwithstanding Section 35029, a local governing board shall not hire an individual for the position of chief administrative officer of the school district under its jurisdiction whose credential has been revoked by the Commission on Teacher Credentialing pursuant to Sections 44421 to 44427, inclusive.

SEC. 3. (a) The sum of two million three hundred thousand dollars (\$2,300,000) is hereby appropriated from the General Fund to Section A of the State School Fund for apportionment by the Superintendent of Public Instruction to the Emery Unified School District for the purpose of an emergency loan. In order to qualify for the loan, the district shall comply with Article 2.5 (commencing with Section 41325) of Chapter 3 of Part 24 of the Education Code and the conditions stipulated in this act.

(1) Of the amount appropriated by this subdivision, one million three hundred thousand dollars (\$1,300,000) shall be available immediately to the district for expenditure in the 2001–02 fiscal year for cash flow needs, based on a schedule submitted to the Controller from the State Department of Education.

(2) Of the amount appropriated by this subdivision, one million dollars (\$1,000,000) shall be available for expenditure, as needed, in the 2001–02, 2002–03, and 2003–04 fiscal years for the district's cash flow needs as determined by the Department of Finance, in a schedule submitted to the Controller.

(b) With the exception of funds that may be needed by the district to meet its cash obligations, as described in subdivision (c), funds may not be disbursed from the proceeds of the loan until the conditions set forth in Section 41327 of the Education Code have been met.

(c) Based on the needs of the district to meet its cash obligations, the Superintendent of Public Instruction may direct the Controller to disburse, on a monthly basis, specific amounts of the emergency loan prior to the approval of all of the conditions established by this act. The Emery Unified School District shall repay the emergency loan to the



state, pursuant to a repayment schedule established by the Superintendent of Public Instruction consistent with subparagraph (A) of paragraph (2) of subdivision (a) of Section 41327 of the Education Code, together with interest at a rate based on the most current investment rate of the Pooled Money Investment Account as of the date of the disbursement of funds to the district.

(d) For the fiscal year in which the apportionments are disbursed and each fiscal year thereafter, the Controller, or his or her designee, shall cause an audit to be conducted of the books and accounts of the district, instead of the audit required by Section 41020 of the Education Code. At the Controller's discretion, the audit may be conducted by the Controller, his or her designee, or an auditor selected by the district and approved by the Controller. The costs of these audits shall be borne by the district. These audits shall be required until the Superintendent of Public Instruction determines that the district is financially solvent, but not earlier than one year following the implementation of the plan nor later than the time the apportionment, including interest, made is repaid. In addition, the Controller shall conduct quality control reviews pursuant to subdivision (c) of Section 14504.2 of the Education Code.

(e) For the fiscal year in which the apportionments are disbursed and each fiscal year thereafter, the Superintendent of Public Instruction shall appoint the Fiscal Crisis and Management Assistance Team to be the fiscal adviser to the district as defined in paragraph (5) of subdivision (e) of Section 42127.6 of the Education Code. The costs of the adviser shall be paid by the district to the extent that the adviser's costs exceed the amount appropriated for the Fiscal Crisis and Management Team pursuant to schedule (9) of Item 6110-485 of Section 2.00 of the Budget Act of 2001. The adviser shall be retained until the Superintendent of Public Instruction determines that the district is financially solvent, but the adviser shall not be released earlier than one year following the implementation of the plan nor later than the time the apportionment made, including interest, is repaid.

SEC. 4. (a) Notwithstanding subparagraph (A) of paragraph (2) of subdivision (a) of Section 41327 of the Education Code, the debt shall be repaid as a straight-line loan amortized over a 20-year term. This amount shall be repaid by the school district, plus interest calculated at a rate equal to the rate earned by the Pooled Money Investment Account on the date the act that adds this section is chaptered, for a period not to exceed 20 years.

(b) If payment is not made within 60 days after the scheduled date, the Controller shall pay the defaulted loan payment of principal and interest by withholding that amount from the next available payment that would otherwise be made to the county treasurer on behalf of the district



pursuant to Section 14041 of the Education Code. However, subject to the approval of the Department of Finance, the amount withheld may be in monthly amounts as determined by an agreement between the Emery Unified School District and the Controller during the period beginning with the next available apportionment through the month preceding the next scheduled payment.

(c) The Director of Finance may amend the payment schedule set forth in subdivision (a) if the director concludes that the amendment is warranted and is in the best interests of both the state and the Emery Unified School District education program. Upon that determination, the director shall notify the Joint Legislative Budget Committee that the payment scheduled will be changed on the date that is 90 days from the date of notification if the Legislature is in session, unless the Joint Legislative Budget Committee takes appropriate action to preclude that change. If the 90-day period ends during a recess of the Legislature or while the Legislature is not in session, the 90-day period shall be extended until the Legislature reconvenes. Amendments to the payment schedule shall defer the unpaid portion of a repayment of the earliest fiscal year in which no other repayment is scheduled. Interest shall accrue on the unpaid portion of a repayment from the scheduled due date until the time the payment is actually made. The interest charge shall be the same rate as specified in Section 41471 of the Education Code.

(d) The school district may repay its loan obligation without incurring any prepayment penalties.

(e) Any allegation of fraud or criminal misuse of district funds on the part of a current or former employee of the district shall be thoroughly investigated by the appropriate law enforcement agency or by the district.

(f) Notwithstanding the repayment schedules provided in subdivisions (a) and (c), any district funds or other assets recovered pursuant to subdivision (e) shall be immediately directed toward repayment of the loan made pursuant to Section 3 of the act adding this section.

SEC. 5. The Legislature finds and declares that due to unique circumstances relating to the fiscal emergency in the Emery Unified School District, a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17556



of the Government Code and Section 6 of Article XIII B of the California Constitution.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make certain revisions in a timely manner to the accounting of a designated appropriation of General Fund moneys, it is necessary that this act take effect immediately.

